REMARKS

Claims 1-20 are pending in this application. By this Amendment, claims 5, 16 and 19 and the specification have been amended. These amendments are being made to facilitate early allowance of the presently claimed subject matter. Applicant does not acquiesce in the correctness of the objections and rejections and reserves the right to present specific arguments regarding any rejected claims not specifically addressed. Reconsideration in view of the above amendments and following remarks is respectfully requested.

In the specification, a revision on page 5 has been made to correct a minor grammatical error. In addition, claim 16 has been revised to broaden the claim to not require plural sidewalls. No new matter has been added.

In the Office Action, claims 5 and 19 are rejected under 35 U.S.C. §112, second paragraph. With regard to claim 5, Applicant has revised the claim to recite that the angle is with respect to the surface 116 (FIG. 3) rather than the horizontal. Applicant has also revised page 6 of the disclosure to provide a description of this relationship. No new matter has been added, however, because FIG. 3 clearly provides disclosure of this relationship. Applicant has also revised claim 19 to depend from claim 18, which provides proper antecedent for the offending term. In view of the foregoing, Applicant requests withdrawal of this rejection.

In the Office Action, claims 1-3, 6, 16, 17 and 20 are rejected under 35 U.S.C. §102(b) as being anticipated by Nomura et al. This rejection is respectfully traversed.

Referring to col. 17, lines 3-30 (and FIG. 4) of Nomura et al., a semiconductor device is described having a raised alignment mark 16 with a metallic film 17 over mark 16. A resist layer

18 containing a dyestuff is deposited over film 17 including in a trench (unnumbered) adjacent mark 16. Nomura et al. describe alignment light 19 projected onto mark 16 as first being attenuated by resist 18 and then reflected by the surface of film 17. This structure divides light 19 into partial-light 21 and 22. Partial-light 21 has a light-path through resist 18 in the trench that is longer than that of partial-light 22 by the height of the mark 16 and film 17. As a result, partial-light 21 is absorbed by resist 18, which increases the contrast of the alignment mark 16.

Applicant submits that Nomura et al. fail to disclose the claimed invention including "a surface that is out of plane with and has substantially the same first reflectivity as an adjacent surface of the semiconductor device," as recited in independent claim 1. The surfaces in Nomura et al. that are out of plane are formed by top surface of the mark 16, the bottom of the trench adjacent the mark 16 and the sidewall of the mark 16 (unnumbered). As explained above, resist 18 overlays all of this structure and includes a dyestuff intended to create different light absorption depending on its thickness. In particular, resist 18 in the trench absorbs partial-light 21, and thus provides a different reflectivity than that for partial-light 22 atop alignment mark 16. As a result, resist 18 must be considered part of the alignment mark's overall structure. The presence of resist 18, however, makes each of the surfaces outlined above have a different reflectivity than the others. For example, the bottom of the trench has a different reflectivity than the top of mark 16. The sidewall of the mark 16 would apparently have a varying reflectivity depending on depth. In view of the foregoing, Nomura et al. fail to disclose, *inter alia*, the surface and adjacent surface having the same first reflectivity.

In addition, Applicant submits that the Office's conclusion that the resist provides a

"resist sidewall" is incorrect because Nomura et al. do not describe, *inter alia*, the resist as a sidewall of the alignment mark. In contrast, a sidewall is provided by alignment mark 16 or the metallic film 17 which overlays that structure. However, since resist 18 is an integral part of the Nomura et al. mark and is planar, the resist actually eliminates any sidewall. In other words, resist 18 creates different reflectivity between surfaces, but it is not a sidewall of the alignment mark having a different reflectivity. Assuming *arguendo* that the resist is not part of the alignment mark, the metallic film 17 covers the entire alignment mark and no disclosure is made that any of the metallic film 17 has a different reflectivity than any other part. Accordingly, Applicant submits that Nomura et al. do not provide the claimed invention including a sidewall having a different reflectivity. In view of the foregoing, Applicants request withdrawal of this rejection.

With regard to the Office's assertion relative to claim 6, Applicant notes the claim recites that "the surface is a substantially orthogonal shape," not that the two surfaces are orthogonal to each other as the Office states. Nomura et al. provide no disclosure relative to this recitation.

Claims 4 and 7 are rejected under 35 U.S.C. §103(a) as being obvious over Nomura et al. This rejection is respectfully traversed for the same reasons as stated above, as well as each claim's own recitations.

Applicant appreciates the indication that claims 8 and 18 would be allowable if presented in independent form. However, as indicated above, Applicant does not believe that further narrowing revisions are required. Applicant also appreciates the indication that claims 9-14 are allowed.

Applicant respectfully submits that the application is in condition for allowance. Should the Examiner believe that anything further is necessary to place the application in better condition for allowance, he is requested to contact Applicant's undersigned attorney at the telephone number listed below.

Respectfully submitted,

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